

Message Text

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ORIGIN EB-11

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TO AMEMBASSY CARACAS PRIORITY

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E.O. 11652: N/A

TAGS:ETRN, VE, US

SUBJECT:FMC ASSERTS PENALTY CLAIM AGAINST BUQUES MERCANTES
DEL CARIBE, C.A.

REF: CARACAS 4112 AND PREVIOUS

1. THE FEDERAL MARITIME COMMISSION (FMC) INFORMED THE
DEPARTMENT IT HAS ASSERTED AN ENFORCEMENT CLAIM IN THE
AMOUNT OF 18,000 DOLLARS AGAINST BUQUES MERCANTES DEL
CARIBE, C.A. FOR 18 OR MORE ALLEGED VIOLATIONS OF SECTION 18
(B)(1) OF THE SHIPPING ACT, 1916, 46 U.S.C. 817(B)(1),
UNDER NEW INFORMAL PROCEDURES ESTABLISHED BY PL NO. 92-416.

2. SECTION 18(B)(1) REQUIRES "...EVERY COMMON CARRIER BY
WATER IN FOREIGN COMMERCE AND EVERY CONFERENCE OF SUCH
CARRIERS SHALL FILE WITH THE COMMISSION...ALL THE RATES
AND CHARGES OF SUCH CARRIER OR CONFERENCE OF CARRIERS FOR
TRANSPORTATION TO AND FROM UNITED STATES PORTS AND FOREIGN
PORTS BETWEEN ALL POINTS ON ITS OWN ROUTE AND ON ANY
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THROUGH ROUTE WHICH HAS BEEN ESTABLISHED..." THE PRACTICE

WHICH RESULTED IN THE ALLEGED VIOLATIONS OF SECTION 18(B)

(1) OCCURRED DURING THE PERIOD BEGINNING ON OR ABOUT
JANUARY 8, 1972 AND ENDING MARCH 21, 1973 WHEN BUQUES

MERCANTES DEL CARIBE, C.A. CARRIED 18 OR MORE SHIPMENTS
OF CARGO BETWEEN VENEZUELAN PORTS OF LA GUAIRA AND PUERTO
CABELLO AND SAN JUAN, PUERTO RICO FOR WHICH IT HAD NO
TARIFF IN EFFECT OR ON FILE WITH THE FMC APPLICABLE TO
THIS TRADE. ITS FIRST TARIFF (FMC-1) FILED WITH THE FMC
BECAME EFFECTIVE ON APRIL 29, 1973 AND COVERS SERVICE
BETWEEN U.S. SOUTH ATLANTIC/GULF PORTS AND PORTS
IN THE CARIBBEAN AND VENEZUELA.

3. PL NO. 92-416 OF AUGUST 29, 1972 AMENDED U.S. SHIPPING
LEGISLATION BY CONVERTING CRIMINAL PENALTIES PROVIDED
THEREIN TO CIVIL PENALTIES IN CERTAIN INSTANCES (E.G. THIS
ONE) AND GIVES THE FMC THE DISCRETION WHETHER TO ASSERT A
CLAIM AND NEGOTIATE A SETTLEMENT, ITSELF, OR TO REFER THE
VIOLATION TO THE DEPARTMENT OF JUSTICE (DOJ) FOR PROSE-
CUTION. PREVIOUSLY, ALL SECTION 18 VIOLATIONS WERE
HANDLED BY THE DOJ IN THE FIRST INSTANCE BECAUSE OF THEIR
ANTI-TRUST OR CRIMINAL IMPLICATIONS. THE INITIAL PENALTY
CLAIM IS BASED ON 18 VOYAGES (1,000 DOLLARS FOR EACH ONE)
DATED ON OR AFTER THE EFFECTIVE DATE OF PL NO. 92-416.
CONCEIVABLY, THE CLAIM COULD HAVE AMOUNTED TO A LARGER
SUM HAD THE CALCULATIONS REFLECTED THE NUMBER OF BILLS OF
LADING INVOLVED OR BEEN MADE AT THE MAXIMUM PENALTY RATE
OF 1,000 DOLLAR DAILY ALLOWABLE UNDER SECTION 18 FOR EACH
DAY A CARRIER IS FOUND TO BE IN VIOLATION OF THE SECTION.
FYI THE INITIAL CLAIM RECOMMENDATION WAS 50,000 DOLLARS.
HOWEVER, THE FMC DECIDED THAT THE HIGHER FIGURE WAS UN-
WARRANTED IN VIEW OF THE CARRIER'S SIZE, FINANCIAL RE-
SOURCES AND LENGTH OF TIME IT HAD OPERATED AS A CARRIER.

4. THE FMC HAS SENT A LETTER DATED APRIL 30, 1974
ASSERTING THE CLAIM TO BUQUES MERCANTES DEL CARIBE,
C.A. AGENT (CAPARRA STEVEDORING AND MARITIME AGENCIES,
INC., GENERAL CONTRERAS STREET, POST OFFICE BOX 3966,
SAN JUAN, PUERTO RICO), WHO IS LISTED IN THE COMMISSION'S
RECORDS AS HAVING FILED THE TARIFF SCHEDULE FOR THE LINE.
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COPY OF THE LETTER WAS ALSO MAILED TO BUQUES MERCANTES
DEL CARIBE, C.A., EDIFICIO PROFESIONAL URDANETA, ROOM 4-C,
AVENIDA URDANETA, CARACAS, VENEZUELA.

5. THE NEXT STEP IN THIS INFORMAL PROCEDURE WOULD BE FOR
THE FMC AND REPRESENTATIVES OF BUQUES MERCANTES DEL CAR-
IBE, C.A., TO ENTER DISCUSSIONS TO RESOLVE THE MATTER.
THE LINE IS UNDER NO LEGAL OBLIGATION TO MEET, NEGOTIATE,

AND/OR SETTLE WITH THE FMC. FAILURE TO DO SO, HOWEVER, WOULD RESULT IN THE MATTER BEING REFERRED TO THE DOJ FOR PROSECUTION AND POSSIBLY A MUCH LARGER FINE UPON ADJUDICATION. THEREAFTER, REFUSAL TO PAY ANY FINE SET BY THE COURT WOULD LEAVE THE DOJ NO ALTERNATIVE BUT TO OBTAIN A COURT ORDER TO ATTACH PROPERTY OF THE LINE FOUND WITHIN UNITED STATES JURISDICTION (E.G. A VESSEL).

6. THIS MATTER IS BROUGHT TO THE EMBASSY'S ATTENTION TO ENABLE THE POST TO BE RESPONSIVE TO ANY INQUIRY THAT MIGHT BE MADE BY THE LINE OR A GOV AGENCY. ANY DISCUSSION OF THE CASE SHOULD EMPHASIZE THAT THE NEW PL NO. 92-416 PROCEDURES ARE MORE FLEXIBLE IN THAT THEY ALLOW THE FMC AND THE INFRACTOR TO NEGOTIATE AN IMMEDIATE OUT-OF-COURT SETTLEMENT, AND PRECLUDE THE NECESSITY OF LENGTHY AND COSTLY LEGAL PROCEEDINGS. MOREOVER, IN VIEW OF THE FACT THAT THERE HAVE BEEN PREVIOUS PROBLEMS INVOLVING A VESSEL OF SAME COMPANY INCLUDING INTERCESSION BY THE GOV, THE EMBASSY MAY, AT ITS DISCRETION, TAKE THIS PROBLEM UP WITH GOV AUTHORITIES IN AN ATTEMPT TO KEEP THE MATTER FROM BEING BLOWN OUT OF PROPORTION. RUSH

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